

CRIMINAL APPEAL NO. 920 OF 1987.

Date of decision: 31.1.1996.

For approval and signature

The Honourable Mr. Justice R. R. Jain

and

The Honourable Mr. Justice H. R. Shelat

Mr. K.G. Sheth, advocate for the appellant/accused.

Mr. K.P. Raval, A.P.P. for respondent-State.

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: R.R.Jain & H.R. Shelat, JJ.

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January 31, 1996.

Oral judgment (Per Jain, J.)

Appellant was tried for offences punishable under Sections 302, 324 and 504 of the Indian Penal Code by the learned Sessions Judge, Valsad at Navsari, in Sessions Case No.61/87 and was sentenced to undergo rigorous imprisonment for life for the offence under Section 302 of the Indian Penal Code. The appellant/accused was also held guilty for the commission of offence under Section

324 of the Indian Penal Code, but no separate sentence was passed.

(1) This is a case wherein 15 witnesses were examined and ultimately, appreciating the evidence, the learned Sessions Judge came to conclusion that the charges levelled against the appellant/accused were proved and thus passed appropriate orders.

(2) Mr. K.G. Sheth, learned advocate for the appellant, has vehemently argued that the appellant/accused has been falsely implicated and yet has been convicted by placing reliance solely upon the testimony of sole eye witness, P.W.6, Rajubhai Amrutlal Gandhi, Ex.18. P.W.6, Rajubhai Amrutlal Gandhi, injured witness, is the brother of deceased Shailesh Amrutlal Gandhi. Mr. Sheth while going through the evidence on record, has tried to invite our attention to some of the infirmities, which, according to him, are relevant to exonerate the present appellant. It is sought to be argued that the appellant and the complainant were residing in same locality and were having cordial relations and, therefore, the accused could not have attacked and thought of committing the act complained, i.e., stabbing, wherein the sole eye witness was injured and his brother, Shailesh Amrutlal Gandhi, lost his life.

(3) We have carefully gone through the evidence of this witness and do not find any infirmity which may go to the root of the merits. Minor discrepancies or infirmities which do not go to the root and otherwise do not shake reliability and credibility of the testimony of the witness carry no weight and are not at all relevant and, therefore, while considering the case on merits, such minor discrepancies/infirmities have to be ignored especially when the testimony of eye witness gets corroboration from medical evidence as well as from other witnesses. The eye witness has given detailed version of the incident, time, place and the manner and method of occurrence. The very fact that the incident took place in the locality where the accused, the witness and the deceased were residing and that the time at which they were preparing themselves to go to bed, suggests unchallenged presence of the witness. Nothing has been brought on record in cross-examination so as to doubt the presence of this witness at the relevant time and place. Testimony of this witness gets corroboration from other independent witnesses, i.e., P.W.7, Ruxmaniben, i.e., mother of deceased at Ex.20, and P.W.9, Nathubhai Ukabhai Patel, Ex.23, P.W. 9, a neighbour who tried to intervene and persuade just few minutes prior to the incident for

not pelting filthy language and abuses to the father of the deceased, Shailesh Amrutlal Gandhi. As regards the circumstances which prevailed prior to the incident, his testimony gets corroboration from P.W.10, Jamnaben Bhanabhai Lalabhai, Ex.24. We may state here that P.W.10 incidentally happens to be the mother of accused. Of course, she was not present at the time of the incident but was in know of circumstances prevailing and developed as had taken place at the place of incident just prior to occurrence of the incident. As to how the testimony of sole eye witness gets corroboration from other independent witnesses and medical evidence, we would like just to narrate in nut-shell how the incident occurred.

(4) According to prosecution, P.W.6, Rajubhai Amrutlal Gandhi, who is the complainant, was injured in the incident and his brother, Shailesh Amrutlal Gandhi, succumbed to the injuries inflicted by the accused. The accused and the complainant as well as the deceased were residing in same locality in front of each other in opposite lanes and at the relevant time, when the complainant as well as his brother, Shailesh, were preparing to go to bed, the appellant/accused, who was just standing on the otla of his own house, started pelting filthy language and abuses against father of the complainant. At that time the complainant as well as Shailesh and their father tried to persuade the appellant/accused but had failed. An attempt was also made by P.W.9, Nathubhai Ukabhai, one Rameshbhai and Vinodbhai, who also were neighbours and residents of the same locality, to persuade the accused not to do so. However, same proved to be an exercise in futile and, therefore, Nathubhai Ukabhai, Rameshbhai and Vinodbhai had gone to their respective houses. It is at this point of time that the accused went inside his house, took out a knife, gave fatal blow to Shailesh Amrutlal Gandhi and also tried to attack Rajubhai Amrutlal Gandhi, P.W.6, the complainant but becoming alert and mobile just could escape serious injuries. The incident of pelting abuses being significant for proving presence of accused, complainant and deceased testimony of witnesses, i.e., P.W.6, P.W.9 and P.W.7 gets corroboration from each other and, therefore, the learned Sessions Judge was right in holding the presence of accused as well as the complainant at the time and place of the incident and we find no reason to dislodge the same.

(5) P.W.6 has narrated the incidence wherein the deceased Shailesh Amrutlal Gandhi was attacked by the appellant/accused with a weapon like knife. This version gets corroboration from medical evidence, P.W.5, Dr.

R.Y. Kelkar, Ex.16, who performed the post-mortem examination of the deceased Shailesh Amrutlal Gandhi. Details of injuries have been given as under and the same falls in line with the version given by the sole injured eye witness.

(1) Stab wound on chest 1" x 1/2" on left side medially 1" below left nipple in between 5th and 6th intercostal space 6" margins are inverted, edges are clear cut and smooth blood clots and serum fluid discharge coming out on examination.

(2) On internal examination it was found as under:

Fascia, intercostal muscles, pectoral muscles incised 3" x 2", 5th left rib partially cut at wound level. Cut at 5th & 6th intercostal space with pleura cut at same level.

Larynx, trachea & Bronchi pale & filled with some serous fluid.

Both lungs were congested.

In pericardium there was cut in direction of wound & strctche.

Right verticle had cut in its full anterior aspect 3" x 2".

This doctor has categorically stated that with such injuries the patient could die within seconds, meaning thereby that the injuries were so serious and on vital part that were sufficient to cause death in ordinary course of nature. The incident was preceded by one incident where in the accused was persistently hurling abuses and was tried to be persuaded by complainant, deceased as well as independent witness, P.W.9 but had failed and thereafter accused went inside his house, took knife, came out and inflicted fatal blow on vital part. His conduct refers to intention of causing bodily injury which is likely to cause death in ordinary course of nature. Therefore, though being a case of single blow yet being on vital part, the resultant death is nothing but a case of culpable homicide.

(6) As regards cause of death the doctor has stated, as is evident from post-mortem notes, Ex.17, that the cause of death is injuries received by deceased Shailesh Amrutlal Gandhi on vital organ, viz., heart and as a result of the injuries the deceased received shock and haemorrhage and ultimately succumbed to them. As regards type of weapon with which such injuries are possible, this witness was cross-examined in detail and was not shaken at all and had adhered to his say that such injury

could have been caused by pen knife. He also states that injury is possible by one sharp edged as well as two sharp edged weapon. He also categorically states that penknife if sufficiently edged then the injury would be smooth. Witness correlates injuries received at rib with use of weapon like penknife. Thus the evidence of sole injured eye witness gets corroboration from other independent witnesses as well as medical evidence, therefore, the prosecution has been successful in establishing charges of culpable homicide levelled against the accused.

(7) If on facts testimony of eye witness is otherwise trustworthy, reliable, and gets corroboration from other witnesses as well as medical evidence, carries much weight, though may be interested witness. An injured eye witness is a stamped witness whose presence admits of no doubt and being himself the victim would not leave out the real assailant and substitute with any innocent person. In this case, presence of injured eye witness and accused has been established beyond all reasonable doubt and, therefore, we have no reason to doubt trustworthiness of his testimony simply because he happens to be brother of deceased and can be placed under the caption "interested witness".

(8) Mr. Sheth, learned advocate for the appellant/accused, has further contended that since both the parties were in good terms having cordial relationship and being neighbour of each other, there was no reason for the accused to attack and cause death of Shailesh and thus submits that the accused has been falsely implicated. This contention of Mr. Sheth can be considered for merely being rejected for simple reason that if relations were cordial and if the parties were not in inimical terms then applying same analogy why the complainant eye witness should falsely implicate the accused? No other circumstance has also been shown by Mr. Sheth which can lead to infer false implication as contended.

As regards evidential value of the injured witness, learned A.P.P. Mr. K.P. Raval has relied upon recent decision of the Supreme Court in the case of Bonkya v. State of Maharashtra, reported in (1995) 6, SCC 447, which says that the presence of injured witness at the scene of occurrence cannot be doubted and being victim by himself would not leave out the real assailant and substitute with any innocent person. Even otherwise also human psychology is such that an injured- an aggrieved

party, would not allow the real assailant go scot-free for doing wrong for no fault of him. No one would falsely implicate any innocent except for reasons which may be conspicuous and prominent on record. In our view, the case in hand is squarely covered by this judgment and, therefore, evidence of injured eye witness, though may be a sole witness, is sufficient to convict the accused for culpable homicide despite being a case of single blow.

(9). Mr. Sheth, learned advocate for the appellant, relied upon decision of the Supreme Court in the case of Sarup Singh v. State of Haryana, reported in AIR 1995 SC 2452. This is a case wherein injury was inflicted on head a vital part of the body with single blow with hammer. In view of peculiar established facts and medical evidence coming forth was suggestive that the accused had knowledge but no intention that injury was likely to cause death hence it was held that the case was covered under Section 304 Part II but not under Section 302 of the Indian Penal Code. We are in respectful agreement with the ratio laid down by the Supreme Court in the aforesaid case. In the facts and circumstances of the case that the accused inflicted knife blow, with intention of causing death, on such vital part of the body with which, according to medical evidence, the injured could not have survived for more than seconds, so the ratio cannot be made applicable.

(10) Relying on the decision of the Supreme Court in the case of Lakshmi Singh v. State of Bihar, reported in AIR 1976 SC 2263, Mr. Sheth, learned advocate for the appellant has argued that as the prosecution has failed to explain injuries sustained by the accused, it shall be presumed that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version. According to Mr. Sheth, by suppressing true version and true genesis of the occurrence the accused has been falsely implicated and, therefore, the evidence of prosecution witnesses would be unreliable and not trustworthy. On this point, our attention is drawn by the learned A.P.P. Mr. Raval to Ex.10, medical certificate issued by Medical Officer, Government Dispensary, Jalalpur, Taluka Navsari, District Valsad. As is evident from the record, immediately after the incident, the accused was sent with police yadi for treatment to this dispensary and while giving history of incident the accused himself had explained that the injury received by him in right hand thumb was by knife while assaulting the deceased Shailesh Amrutlal Gandhi.

In our view, what more explanation for injuries sustained by the accused is required on record? If the accused himself has explained the injury, or the record itself renders explanation the prosecution is not required to explain any more. Of course, the learned Sessions Judge has not relied upon this evidence but this could have been treated as extra judicial confession and could have been relevant and material fact in support of prosecution case. In the case of Lakshmi Singh (supra) also the Supreme Court has said that non-explanation of injuries sustained by the accused per-se is not fatal in all cases and if the evidence is so clear and cogent, probable, consistent and creditworthy, may out-weight the omission of non-explanation of injuries and if so, the prosecution may not explain the injuries sustained by the accused. In the case in hand, the prosecution evidence is very clear, cogent, independent, consistent as well as creditworthy and since injury on accused stands satisfactorily explained there is no question of any omission. Even treated as omission, the evidence outweighs and, therefore, the ratio laid down by the Supreme Court in Lakshmi Singh's case (supra) will have no bearing on this case.

No more submissions are made by Mr. Sheth, learned advocate for the appellant/accused which can influence us to take different view from one taken by the learned Sessions Judge, Valsad at Navsari and, therefore, in the facts and circumstances of the case, we hold that the learned Sessions Judge was right in convicting the accused/appellant for the offence punishable under Section 302 read with Section 324 of the Indian Penal Code and sentencing him to undergo rigorous imprisonment for life.

In the result, the appeal is dismissed.